UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/731,019	12/07/2000	David J. Wilson	2043.060US1	9206

49845 7590 03/26/2012

SCHWEGMAN, LUNDBERG & WOESSNER/EBAY
P.O. BOX 2938
MINNEAPOLIS, MN 55402

EXAMINER	
CHRISTENSEN, SCOTT B	
ART UNIT	PAPER NUMBER
2444	

NOTIFICATION DATE	DELIVERY MODE
03/26/2012	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPTO@SLWIP.COM
SLW@blackhillsip.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID J. WILSON

Appeal 2000-009233
Application 09/731,019
Technology Center 3600

Before MURRIEL E. CRAWFORD, HUBERT C. LORIN, and ANTON W. FETTING, *Administrative Patent Judges.*

FETTING, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE[1]

David J. Wilson (Appellant) seeks review under 35 U.S.C. § 134 (2002) of a final rejection of claims 1, 7, 9, 11, 12, 14, and 16, the only claims pending in the application on appeal. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b) (2002).

The Appellant invented interactive user tools for enabling users of content on a distributed communication network to collectively indicate the degree of helpfulness or usefulness of individual items of contents (Specification 1: Field of the Invention).

An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below [bracketed matter and some paragraphing added].

> 1. A method for identifying as being helpful or otherwise valuable product/service reviews in a database coupled to a distributed communication network, the method comprising:
>
> [1] displaying product/service reviews
>
> from the database on a client display connected to the database over the network;
>
> [2] providing an interactive element
>
> associated with each of the displayed reviews on the client display,
>
> which when clicked by a user,
>
> indicates that the user has found

[1] Our decision will make reference to the Appellant's Appeal Brief ("App. Br.," filed February 1, 2010) and the Examiner's Answer ("Ans.," mailed March 24, 2010).

a displayed review associated with a product/service

helpful in determining whether or not to purchase or use the product/service;

[3] receiving at the database

an indication that the user has clicked the interactive element,

and

incrementing a count of a stored number of indications for the review

(1) in response to the indication

and

(2) if the stored number of indications does not exceed one indication for the review from the user;

and

[4] displaying the count of the stored number of indications for the review on the client display together with the review;

[5] sending an error to the user

if the interactive element is clicked more than once by the user for the review;

[6] sorting the reviews

in ascending or descending order

as a function of the number of indications tallied for each review,

and

sequentially displaying the reviews in the sorted order;

and

[7] recurrently tallying the number of indications

and

re-sorting the reviews for a subsequent display.

The Examiner relies upon the following prior art:

Nielsen US 6,789,075 B1 Sep. 7, 2004

Epinions.com preview, posted on http://www.epinions.com on Oct. 12, 1999.

NOWTHIS.COM blog entry, Posted on http://nowthis.com on Nov. 24, 1999.

Claims 1, 7, 9, 11, 12, 14, and 16 stand rejected under 35 U.S.C. § 103(a) as unpatentable over NowThis and Nielsen.

Claims 1, 7, 9, 11, 12, 14, and 16 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Epinions and Nielsen.

ISSUES

The issues of obviousness turn primarily on whether the applied references describe all of the claim limitations.

FACTS PERTINENT TO THE ISSUES

The following enumerated Findings of Fact (FF) are believed to be supported by a preponderance of the evidence.

Facts Related to the Prior Art

Nielsen

01. Nielsen is directed to acting on information elements in a computer network. Nielsen 1:41-43.

02. In step 703, Nielsen's browser sorts the list by descending priority as the primary sort key and ascending sequence number as the secondary sort key. Thus, objects with a high priority will be sorted on top and objects with the same priority will be sorted such that the ones that are referenced early in the web file are

sorted above those that are referenced later in the web file. Nielsen 7:35-41.

NowThis

03. NowThis is directed to a series of blog entries. Among those entries is one that transcribes the following from an Amazon.com customer review. "1 people found this review helpful. 0 did not. Was it helpful to you? [YES] [NO]." NowThis 2.

Epionions

04. Epinions is directed to providing unbiased buying decision advice. Epionions 1.

ANALYSIS

Claims 1, 7, 9, 11, 12, 14, and 16 rejected under 35 U.S.C. § 103(a) as unpatentable over NowThis and Nielsen.

We are persuaded by Appellant's arguments that (1) sending an error to the user if the interactive element is clicked more than once by the user for the review in an interactive voting environment was not common knowledge at the time of the invention, because feedback could be provided without sending an error to a user; (2) NowThis is merely a blog entry and no further description or details of any actual system were provided, no further evidence was referred to in either the blog entry or the Office Action to show that there ever was a "ratings-rating" system, and no further evidence was referred to that shows whether more than one review was ever stored by Amazon; and (3) NowThis and Nielsen, either separately or in the proposed combination, do not provide sorting the reviews ... as a function of the

number of indications tallied for each review ... and re-sorting the reviews for a subsequent display. Appeal Br. 13-14.

The Examiner admits the claimed limitations are not shown by these references, but invites us to affirm based on numerous instances of administrative notice and speculation as to how those notice evidence pieces could be pieced together to meet the claim. We decline the invitation. The Examiner provides no documentary evidence for limitations [2], [3], [5], and [7], and asks us to inferentially reach limitation [6]. It is never appropriate to rely solely on "common knowledge" in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based. *In re Zurko*, 258 F.3d 1379, 1385 (Fed. Cir. 2001). This is a case where the Examiner asks us to recreate a whole tapestry from a few diverse threads, and would impose on the Appellant the burden of proving a negative for all of the speculative notices.

Claims 1, 7, 9, 11, 12, 14, and 16 rejected under 35 U.S.C. § 103(a) as unpatentable over Epinions and Nielsen.

We are persuaded by Appellant's arguments that are similar to those in the first rejection *supra*. Appeal Br. 16-18. Epinions does not significantly add to the descriptions in NowThis, and the Examiner's fact finding suffers similar ommissions to those in the rejection over NowThis and Nielsen.

CONCLUSIONS OF LAW

The rejection of claims 1, 7, 9, 11, 12, 14, and 16 under 35 U.S.C. § 103(a) as unpatentable over NowThis and Nielsen is improper.

The rejection of claims 1, 7, 9, 11, 12, 14, and 16 under 35 U.S.C. § 103(a) as unpatentable over Epinions and Nielsen is improper.

DECISION

The rejection of claims 1, 7, 9, 11, 12, 14, and 16 is reversed.

REVERSED

JRG